

## **REMARKS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the above amendments and the following remarks.

### **I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 1-10 are currently pending in this application. Claim 1 is hereby amended. Support for the amendment to claim 1 is found in, for example, paragraph [0016] of Applicants' published application.

### **II. OBJECTIONS TO THE CLAIMS**

Claim 1 was objected to under 37 C.F.R. §1.75(i) which requires each element of the claimed invention to be separated by a line indentation. Claim 1 has, therefore, been accordingly amended. Reconsideration and withdrawal of this objection is, thus, respectfully requested.

### **III. THE REJECTIONS UNDER 35 U.S.C. § 102(b)**

Claims 1-4 and 10 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,444,560 to Jacklich ("*Jacklich*"). Claims 1, 5, and 7-10 were also rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,340,367 to Vadas ("*Vadas*"). The rejections are traversed for at least the following reasons.

Claim 1, recites, *inter alia*:

"A device for ejecting a liquid or pasty product, comprising ...

... an articulated lever acting on the teeth of the drive cylinder ..., wherein the lever is connected to the body by means of a joint **comprising a pivot pin and a slot, the pivot pin adapted to elastically deform to engage the slot for facilitating attachment and dislocation of the lever with respect to the body**

**without requiring a tool.**” (Emphasis added)

Neither *Vadas* nor *Jacklich* disclose or suggest a “lever” that “is connected to the body by means of a joint comprising a pivot pin and a slot, the pivot pin adapted to elastically deform to engage the slot for facilitating attachment and dislocation of the lever with respect to the body without requiring a tool [.]” as recited in claim 1.

The cited *Vadas* and *Jacklich* references merely disclose the attachment of a lever to a device **without** any description or suggestion associated with the lever’s removability without the use of a tool facilitated by an elastically deformable pivot pin. For example, col. 2, lines 21-23 of *Jacklich* discloses an upper portion 17 of a cylinder 9 that includes a lug 51 which extends outwardly just above a slot 49, whereby an operating handle 53 is pivoted on the lug 51. Similarly, according to col. 3, lines 40-43 of *Vadas*, as best seen in Figs. 1 and 5, a tip loading plunger LP is manually advanced and retracted by a loading lever 40 having a hub 41 that is pivotally mounted on a pin 42 extending between upright ears 44 and 46.

By way of example and not limitation, paragraph [0016] of Applicants’ published application recites:

[0016] The body 2 comprises a mechanism for ejecting and metering the product. This mechanism has a lever 4 articulated to the body about a pivot pin 15. This lever is connected to the body by a joint produced by elastic deformation of its pivot pin 15 as it fits into slots 14 made in the body 2. This joint makes for ease of disassembly of the lever preferably requiring no disassembly tools and therefore allowing access for cleaning the lever and those regions of the body that lie under the lever. It also allows the user to mount on the body a lever the size of which is tailored to his or her build. This makes it possible to improve the precision with which the device can be used. This lever ... to clean.

The relied upon portions of *Vadas* and *Jacklich* do not disclose or suggest the above identified feature of claim 1, as amended. Therefore, for at least the foregoing reasons, Applicants submit that independent claim 1 is patentable.

Moreover, Applicants respectfully disagree with the assertion that “*in an apparatus claim, functional language is given little patentable weight.*” According to *In re Schreiber*, 128 F.3d 1473, 1577:

“A patent applicant is free to recite features of an apparatus either structurally or functionally. See *In re Swinehart*, 58 C.C.P.A. 1027, 439 F.2d 210, 212, 169 U.S.P.Q. (BNA) 226, 228 (CCPA 1971) (“There is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.”). Yet, choosing to define an element functionally, i.e., by what it does, carries with it a risk. As our predecessor court stated in *Swinehart*, 439 F.2d at 213, 169 U.S.P.Q. (BNA) at 228:

where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter [\*\*11] shown to be in the prior art does not possess the characteristic relied on.

See also *In re Hallman*, 655 F.2d 212, 215, 210 U.S.P.Q. (BNA) 609, 611 (CCPA 1981); *In re Ludtke*, 58 C.C.P.A. 1159, 441 F.2d 660, 663-64, 169 U.S.P.Q. (BNA) 563, 565-67 (CCPA 1971).

The examiner and the Board both addressed the question whether the functional limitations of Schreiber's claim gave it patentable weight and concluded that they did not, because those limitations were found to be inherent in the Harz prior art reference.

In contrast with *Schreiber*, the recited functional limitation of claim 1 (i.e., “**facilitating attachment and dislocation of the lever with respect to the body without requiring a tool**”) is thus directed to patentable subject matter and is not an inherent characteristics of either *Vadas* or *Jacklich*'s lever.

Reconsideration and withdrawal of this rejection is, therefore, respectfully requested.

#### **IV. THE REJECTIONS UNDER 35 U.S.C. § 103(a)**

Dependent claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Vadas*. Claim 6 depends indirectly from independent claim 1. Therefore, reconsideration and allowance of claim 6 on the basis of depending from an allowable base claim (i.e., independent claim 1) is respectfully requested.

#### **V. DEPENDENT CLAIMS**

The other claims are dependent from independent claim 1, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

#### **CONCLUSION**

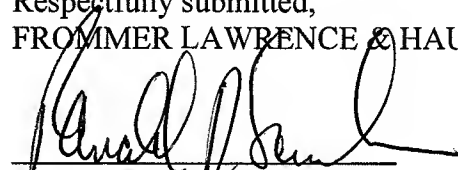
In view of the foregoing, it is believed that all of the claims in this application are patentable over the prior art, and an early and favorable consideration thereof is solicited.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to  
Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By:

A handwritten signature in black ink, appearing to read "Ronald R. Santucci", written over a horizontal line.

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